

Appellate Tribunal for Electricity
(Appellate Jurisdiction)

Dated: 28th Nov, 2014

Present:

**HON'BLE MR. JUSTICE M KARPAGA VINAYAGAM, CHAIRPERSON
HON'BLE MR. RAKESH NATH, TECHNICAL MEMBER**

APPEAL NO.156 OF 2013 AND APPEAL NO.248 OF 2013

APPEAL NO.156 OF 2013

In the Matter of:

**Simran Wind Project Private Limited
Corporate Office: 2F & 3F,
North Block, Park Plaza
71 Park Street, Kolkata-700 016**

**Paharpur Cooling Towers Limited
Corporate Office:
Paharpur House
8/1/B Diamond Harbour Road,
Kolkata-700 027**

**Green Infra Wind Power Projects Limited
2nd Floor, Tower No.2
NBCC Plaza, Pushp Vihar,
Saket, New Delhi-110 017**

..... Appellant(s)

Versus

**1. Central Electricity Regulatory Commission
3rd & 4th Floor, Chanderlok Building,
Janpath, New Delhi-110 001**

**2. National Load Despatch Centre
Power System Operation Company Limited
B-9, Qutab Institutional Area,
Katwarai Sarai
New Delhi-110 016**

...Respondent(s)

Counsel for the Appellant(s) : Mr. Anand K Ganesan
Ms. Swapna Seshadri

Counsel for the Respondent(s): Mr. M S Ramalingam for R-1
Mr. S B Upadhyah, Sr Adv
Mr. Pawan Upadhyay
Ms. Anisha Upadhyay
Mr. Param Kr Mishra
Mr. Kaustuv P Pathak
Mr. Jyoti Prasad for R-2

APPEAL NO.248 OF 2013

In the Matter of:

**IL&FS Renewable Energy Limited
IL&FS Financial Centre, 8th Floor,
Plot C-22, G Block Bandra-Kurla
Complex Bandra (East),
Mumbai-400 051**

**IL&FS Wind Power Limited
IL&FS Financial Centre, 8th Floor,
Plot C-22, G Block Bandra-Kurla
Complex Bandra (East),
Mumbai-400 051
Tadas Wind Energy Limited**

**IL&FS Financial Centre 8th Floor,
Plot C-22, G Block Bandra Kurla
Complex, Bandra (East)
Mumbai-400 051**

..... Appellant(s)

Versus

**3. Central Electricity Regulatory Commission
3rd & 4th Floor, Chanderlok Building,
Janpath, New Delhi-110 001**

**4. National Load Despatch Centre
Power System Operation Company Limited
B-9, Qutab Institutional Area,
Katwarai Sarai
New Delhi-110 016**

...Respondent(s)

Counsel for the Appellant(s) : Mr. Amit Kapur
Mr. Vishrov Mukherjee
Ms. Rimali Batra

Counsel for the Respondent(s): Ms. Shally Bhasin
Ms. Sadapurna Mukherjee
Mr. Lakshmeesh Kamath
Mr. M S Ramalingam for R-1
Ms. Jyoti Prasad
Mr. Arjun Krishnan for R-2

J U D G M E N T

PER HON'BLE MR. JUSTICE M. KARPAGA VINAYAGAM,
CHAIRPERSON

1. M/s. Simran Wind Project Private Limited and two others have filed the Appeal No. 156 of 2013 challenging the Order dated 07.05.2013 passed by the Central Commission rejecting the Petition filed by the Appellants, the Wind Energy Generators, seeking for Renewable Energy Certificates from the commercial operation date of the Generating Stations.
2. IL & FS Renewable Energy Limited and two others have filed this Appeal No. 248 of 2013 challenging the impugned Order dated 15.07.2013 passed by the Central Commission rejecting the prayer of the Appellants to give a direction to the National Load Despatch Centre – Respondent No.2, to issue the Renewable Energy Certificate from the date of commissioning of their respective Wind Power Plant Units.
3. Though the Appellants in both the Appeals and the impugned Orders are also different, we deem it fit to render the common Judgment since the issues involved in both the Appeals are one and the same.

4. Let us refer to the facts of each Appeal.

5. The facts in **Appeal No. 156 of 2013** are as follows:

(i) Simran Wind Projects Private Limited- Appellant No.1; Paharpur Cooling Towers Limited – Appellant No.2 and Green Infra wind Power Projects Limited – Appellant No.3 are the Appellants herein, who are engaged in the business of generation and supply of electricity through renewable energy sources, namely wind energy.

(ii) The Central Commission with a view to encourage and promote renewable sources of electricity evolved the Renewable Energy Certificate mechanism. For the above purpose, the Central Commission had framed the REC Regulations 2010 on 14.01.2010 namely, Central Electricity Regulatory Commission (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010.

(iii) The basic intent of the above Regulation is to provide the alternative mechanism to the renewable energy sources for promotion apart from the

provisions of promotional tariff and other concessions available under Section 86 (1) (e) of the Electricity Act, 2003. In 2011-2012 the Generating units of the Appellants were commissioned. These Units were registered under the REC Regulations of the Central Commission after fulfilling the conditions for supply of electricity. In certain cases, the process of registration was completed after the commercial operation of the generating station, though the generation and supply of electricity from the date of commercial operation was in compliance with the substantive conditions specified in the REC Regulations.

(iv) National Load Despatch Centre is the 2nd Respondent herein. This is a nodal agency under the REC Regulations.

(v) The Appellants applied for the Renewable Energy Certificate to the National Load Despatch Centre, 2nd Respondent, for the period from the date of commercial operation till the date of registration, even though the generation and supply of electricity was in compliance with the substantive provisions of

the REC Regulations. However, the National Load Despatch Centre (NLDC) refused to provide the Renewable Energy Certificates for the said period.

(vi) The Appellants, aggrieved by the decision of the NLDC, have filed a Petition before the Central Commission seeking for the direction for the issuance of Renewable Energy Certificate from the date of commercial operation. This Petition had been filed in September 2012. The Central Commission at the admissions stage itself dismissed the said Petition filed by the Appellants by the Order dated 07.05.2013 holding that the Appellants were not entitled to seek for the Renewable Energy Certificates from the date of the commercial operation to the date of registration.

(vii) Aggrieved by this Order dated 07.05.2013, the Appellants have filed the present Appeal before this Tribunal.

6. The facts in other **Appeal No. 248 of 2013** are as follows:

(i) IL & FS Renewable Energy Limited; IL & FS Wind Power Limited (IWPL) and Tadas Wind Energy

Limited (TWEL) are the Appellants herein. They all are Wind Energy Generators.

(ii) M/s IL & FS Wind Power Limited, 2nd Appellant, commissioned Wind Turbine Generation Station with an installed capacity of 12 MW in Tamil Nadu. Similarly, the 2nd Appellant commissioned another Wind Turbine Generation Station in Gujarat.

(iii) M/s Tadas Wind Energy Limited, 3rd Appellant, commissioned the Wind Turbine Generation Station in Karnataka. Similarly, it commissioned another Station in Andhra Pradesh.

(iv) Both IWPL & TWEL filed a Petition before the Central Commission praying for the issuance of directions to NLDC, 2nd Respondent, to consider the commissioning date of generating station as the effective date for issuance of Renewable Energy Certificate.

(v) Ultimately, the Central Commission after hearing the submissions of the Appellants passed the impugned Order on 15.07.2013 rejecting the prayer of the Appellants and holding that there is no justification

in the claim of the Appellants for the issuance of Certificates from the date of commissioning. Hence, the present Appeal has been filed by the Appellants in Appeal No. 248 of 2013.

7. The main arguments advanced by the Appellants in both the Appeals are as follows:

- i. The REC Regulations or the procedures laid down there under do not prohibit the issuance of Renewable Energy Certificates from the date of generation of electricity prior to the date of registration.
- ii. The Renewable Energy Certificates are issued corresponding to generation of electricity. The said Certificates have to necessarily relate back to the date when the generation started in compliance with substantive conditions of not taking any promotional or concessional benefits.
- iii. The Registration is procedural in nature to verify whether the substantive conditions are fulfilled. The person fulfilling the substantive conditions has a vested right to get it registered.

- iv. Regulation 7 provides for application being made for electricity generated up to three months prior to the date of application. Reference is to the generation and for three months prior period. There is no restriction that the generation has to be done only after the date of registration.
- v. The object and purpose of the Renewable Energy Certificate mechanism and the Electricity Act being to promote renewable energy, the interpretation to further the objects and to promote renewable energy is to be taken and not to defeat the same.
- vi. The Central Commission has wrongly held that the REC Regulations do not permit the issuance of Renewable Energy Certificate for the electricity generated from the date of commissioning and generation till the date of registration. Only the amendments which have been introduced subsequent to the impugned Order have put such restrictions. Till the date of such amendment, the Appellants were entitled to the Renewable Energy Certificate for the electricity generated from the date of commissioning till the date of registration. The Central Commission

has failed to consider that the REC Regulations do not provide for the Renewable Energy Certificates to be given only for the electricity generated from the date of registration. In other words, there is no prohibition for providing the Renewable Energy Certificates from the date of registration and supply in compliance with the substantive conditions. When the substantive provisions have been complied with, the Renewable Energy Certificate ought not to be deprived to the Appellants for the electricity generated from the date of commissioning merely because the procedural aspects of registration have occurred subsequently.

vii. All the units of the Appellants have been commissioned much prior to the date of amendments i.e., on 10.07.2013. It is only from 10.07.2013 that the Commission introduced a condition that eligible entity will be entitled to Renewable Energy Certificates from the commercial operation date or the date of registry whichever is later. In terms of the Electricity Act and as per the Regulation 1 of Amendment of Regulations, the amendments will have to operate prospectively and not retrospectively.

Therefore, the Appellants are entitled to Renewable Energy Certificates from the commercial operation date even for the units where the registration was granted later during the period i.e., prior to the period of amendment.

viii. On the above grounds, the impugned Order is sought to be set aside by the Appellants.

8. The learned Counsel for the Central Commission as well as the NLDC have elaborately argued in justification of the impugned Orders and contended that there is no infirmity in the impugned Order so as to warrant our interference and accordingly prays that the Appeals may be dismissed.
9. In the light of the rival contentions, the following questions would arise for consideration.

a) Whether the Central Commission is justified in holding that the entitlement of RECs is only for the electricity generated from the date of Registration under the REC Regulations, especially when there is no mention of such an interpretation in the REC Regulations and the REC Procedure notified under the REC Regulations?

b) Whether the procedural aspect of Registration after verification of the compliance with the conditions under the REC Regulations can override the substantive provisions of compensatory nature fo RECs, since the intent of the REC Scheme is to compensate for power generated from RE sources in two phases, viz, (i) electricity component by Discom or sale to third party through mutual arrangement and (ii) Environment Component by REC?

c) Whether the electricity generated and supplied in compliance with the conditions provided for in the REC Regulations can be denied the green component, namely, RECs for the only reason that the Registration has occurred at a later date?

10. Since all these questions are interrelated, let us take these issues together for discussion.
11. The Appellants are Generating Companies being engaged in the business of generation and supply of electricity from wind generating units. Those wind generating units have been established on various dates by the Appellants.

12. REC Regulations have been framed by the Central Commission providing for alternate mechanism for the promotion of renewable energy, besides the provisions of the promotional tariff and other concessions available under Section 86 (1) (e) of the Electricity Act. Under the REC mechanism and the REC Regulations, the electricity generated by the renewable sources is treated equivalent to conventional sources of electricity for the purpose of the tariff and other benefits.
13. The compensation payable to the renewable generators under the REC mechanism is divided into two components.
- (i) Non-promotional tariff, without considering any concessional or promotional measures available to a renewable energy generator;
 - (ii) Renewable Energy Certificate for the green attribute of the electricity.
14. The REC Regulations provide for various conditions to be fulfilled by the renewable energy generator for getting the benefits of Renewable Energy Certificates. The relevant Regulation No.5 is as follows:

“5. Eligibility and Registration for Certificates:

(1) A generating company engaged in generation of electricity from renewable energy sources shall be eligible to apply for registration for issuance of and dealing in Certificates if it fulfills the following conditions:

a. it has obtained accreditation from the State Agency;

b. it does not have any power purchase agreement for the capacity related to such generation to sell electricity at a preferential tariff determined by the Appropriate Commission; and

c. it sells the electricity generated either (i) to the distribution licensee of the area in which the eligible entity is located, at a price not exceeding the pooled cost of power purchase of such distribution licensee, or (ii) to any other licensee or to an open access consumer at a mutually agreed price, or through power exchange at market determined price.

“Provided that such a generating company having entered into a power purchase agreement for sale of electricity, at a preferential tariff shall not, in case of premature termination of the agreement,, be eligible for participating in the Renewable Energy Certificate (REC) scheme for a period of three years from the date of termination of such agreement or till the scheduled date of expiry of power purchase agreement whichever is earlier ,if any order or ruling is found to have been passed by an Appropriate Commission or a competent court against the generating company for material

breach of the terms and conditions of the said power purchase agreement:

Provided further that a Captive Power Producer (CPP) based on renewable energy sources shall be eligible for the entire energy generated from such plant including self consumption for participating in the REC scheme subject to the condition that such CPP has not availed or does not propose to avail any benefit in the form of concessional/promotional transmission or wheeling charges and/or banking facility benefit and waiver of electricity duty.

Provided also that if such a CPP forgoes on its own, the benefits of concessional transmission or wheeling charges, banking facility benefit and waiver of electricity duty, it shall become eligible for participating in the REC scheme only after a period of three years has elapsed from the date of forgoing such benefits.

Provided also that the above mentioned condition for CPPs for participating in the REC scheme shall not apply if the benefits given to such CPPs in the form of concessional transmission or wheeling charges, banking facility benefit and waiver of electricity duty are withdrawn by the State Electricity Regulatory Commission and/or the State Government.

The dispute, if any, on the question as to whether such concessional/promotional benefits were availed by a CPP or not shall be referred to the Appropriate Commission.”

Explanation: For the purpose of this Regulation, the expression banking facility benefit' shall mean only such banking facility whereby the CPP gets the benefit of utilizing the banked energy at any time (including peak hours) even when it has injected into grid during off peak hours.

Explanation.- for the purpose of this regulations 'Pooled Cost of Purchase' means the weighted average pooled price at which the distribution licensee has purchased the electricity including cost of self generation, if any, in the previous year from all the energy suppliers long-term and short-term, but excluding those based on renewable energy sources, as the case may be.

(2) The generating company after fulfilling the eligibility criteria as provided in clause (1) of this regulation may apply for registration with the Central Agency in such manner as may be provided in the detailed procedure:

(3) The Central Agency shall accord registration to such applicant within fifteen days from the date of application for such registration.

Provided that an applicant shall be given a reasonable opportunity of being heard before his application is rejected with reasons to be recorded in writing.

(4) A person aggrieved by the order of the Central Agency under proviso to clause (3) of this regulation may appeal before the Commission within fifteen days from the date of such order, and the Commission may pass order, as deemed appropriate on such appeal.

15. A reading of the above Regulation would make it clear that a Generating Company engaged in the generation of electricity from the renewable energy sources shall be eligible to apply for registration for issuance of Renewable Energy Certificates. The Renewable Energy Certificates are issued corresponding to the generation of electricity by the Renewable Energy Generator and injection to the Grid. This is subject to the fulfilment of certain conditions specified in the REC Regulations. The primary conditions for eligibility for registration are as follows:

i) In case of sale of electricity to the distribution licensee, the same shall be at the tariff equal to the Weighted Average Pooled Power Purchase Cost of the distribution licensee during the previous year. The sale of electricity to the distribution licensee shall not be at the preferential tariff. However, the sale of electricity to third parties may be at mutually agreed rate.

ii) The generator shall not avail any promotional facilities in the form of transmission, wheeling, banking facilities from the transmission/distribution

licensee for supply of electricity while applying for the Renewable Energy Certificate.

16. If these conditions specified in the REC Regulations are fulfilled by the Renewable Energy Generator, the Generator has a vested right to be entitled to the Renewable Energy Certificates under the mechanism formulated by the Central Commission from the day the power is injected to the grid. In other words, there is no discretion granted to the NDLC to refuse registration to a generator which has fulfilled the conditions referred to above. Thus the generator is entitled to the Renewable Energy Certificates for the electricity generated and injected into the grid.
17. The Central Commission, in order to identify the generators who are entitled to the Renewable Energy Certificates, has provided for the registration mechanism. The registration is required for considering the issuance of Renewable Energy Certificates. The Generating Company which fulfils the conditions specified by the Central Commission is required to apply for registration with the Central Agency nominated by the Central Commission. Accordingly, the Central Commission nominated the National Load Despatch Center-R.2 as Central Agency for the purpose of registration.

18. The procedure for registration of renewable energy generation projects is specified in the Regulations. This procedure includes aspects with regard to the application to be made, the fees and charges for registration, the information to be provided by the generator etc., The said procedure prescribed by the Central Commission also provides for the application format, the information to be provided including the date of Commissioning of the project.
19. According to the Appellant, none of the provisions of the REC Regulations at the relevant time or the procedure specified by the Central Commission restrict the entitlement of the generator to obtain Renewable Energy Certificates from the date of commissioning of the generation project.
20. Refuting this contention, the Respondents submit that no Regulation especially Regulation 7 of REC Regulations does not permit the generator to obtain Renewable Energy Certificates from the date of commercial operation date.
21. In the light of the rival contentions, let us see the Regulation 7. Regulation 7 of the REC Regulations provides for the grant of Renewable Energy Certificates. This is in relation to the generation of electricity through the renewable sources. It enables the Applicant to apply for the Renewable Energy

Certificates for the electricity generated up to three months prior to the date of Application. The same is read as follows:

“7. Denomination and issuance of Certificates:

(1) The eligible entities shall apply to the Central Agency for Certificates within three months after corresponding generation from eligible renewable energy projects.”

A perusal of this Regulation would not show that there is limit to the Renewable Energy Certificates to the generation only after the date of registration. As per Regulation 7 (1), the eligible entities are entitled to apply for REC within three months after the corresponding generation.

22. According to the Appellant, if the intention of the Regulations was to limit the Renewable Energy Certificates to the generation only after the date of registration, the Regulation 7 would have contained as under:

“The eligible entities shall apply to the Central Agency for Certificates within three months after corresponding generation which is after the date of registration from eligible renewable energy projects.”

23. In the absence of the wordings that Application shall be filed within three months after the generation and after the date of registration, section 7 would mean that the Application has

to be filed within three months after corresponding generation and there was no reference about the date of registration. The purpose for providing the said Certificate i.e, Renewable Energy Certificates is to entitle the Generator for claiming the Renewable Energy Certificate benefit from the same day it gets paid for by Distribution Company under the REC scheme, in view of the green energy generated and injected to the Grid fulfilling the eligibility criteria. This would establish that the generator is entitled to the Renewable Energy Certificates from the date of commissioning of the generating station and supply of electricity to the Grid.

24. It is also noticed that the requisite information to be provided by the Generator is the actual date of commissioning or the proposed date of commissioning. This is required for the purpose of reckoning the date from which the Generating Company is entitled for Renewable Energy Certificates. This shows that the application for Registration can be filed and the registration process can be completed even after commissioning.
25. The very fact that the requisite information including the actual date of commissioning or scheduled date of

commissioning obtained and recorded by the State Agency would show that the intention of REC scheme is to allow the Renewable Energy Certificates even from the date of commissioning. Had the intention of the REC Scheme been to allow Renewable Energy Certificates only after the date of registration, then there was no need to get the information with reference to the actual date of commissioning or proposed date of commissioning. In such an event the REC Regulations would have specifically provided that the Renewable Energy Certificates shall be issued for the electricity injected only from the date of registration. The Regulation, which is applicable to the present case do not say so.

26. The Appellants have been generating and supplying electricity in compliance with the conditions laid down in the REC Regulations. The Appellants have been supplying electricity to the distribution licensee at the Average Pooled Power Purchase Cost or supplying for captive use, without taking the promotional and concessional measures available to the renewable generators. The generation and supply of electricity is metered and authenticated by the distribution

licensee from the date of commissioning of the generating stations for all the Appellants.

27. In fact, the date of registration has nothing to do with the date of eligibility or entitlement for issuance of Renewable Energy Certificates. The Certificate is only a confirmation to show that the substantive conditions under the REC Regulations have been fulfilled. The Central Commission by the impugned Order has wrongly held that in terms of the REC Regulations the entitlement of Renewable Energy Certificates is only for the generation from the date of registration and not for the period from the date of commissioning to the date of registration. The relevant portion of the Order is as follows:

“Regulation 7(1) of REC Regulations speaks about the application by ‘eligible entities’ for certificates within three months after corresponding generation from the eligible generation projects. The language used is ‘eligible entities’ and not ‘registered entities’. One may argue that irrespective of the date of registration, an eligible entity is entitled to apply for RECs within three months from the date of commissioning and generation of electricity as Regulation 7 (1) has not been made subject to Regulation 5 (1) of the REC Regulations.

.....

Registration of an eligible entity is not a mere procedural formality. It is an exercise undertaken to ascertain whether an entity claiming to be eligible fulfills the conditions specified in the REC Regulations or not.

.....

Suppose, a renewable energy project has been commissioned in January 2013 but it applies for registration on 15th April 2013 and is granted registration on 30th April 2013. After registration, it applies for RECs for the generation during January 2013 in May 2013. Since the period of three months corresponding to the month of generation in January 2013 has already expired by the time application is made, it would require relaxation of Regulation 7 (1) to extend the period for making application for issuance of RECs for which an application has to be made before this Commission. Therefore, it is nether the scheme nor the intention of the REC Regulations that an eligible entity shall be eligible for issue of RECs for the period prior to its registration with the Central Agency.

28. The learned Counsel for the Appellant in assailing these findings stated that the impugned Order is erroneous for the following reasons:

“The finding of the Central Commission is self-contradictory. If a registration exercise is only to verify whether the eligible entity fulfils the conditions

specified in the Regulations, the exercise is procedural. The procedure is to verify whether the substantive conditions are fulfilled and registration can be granted”.

29. We find force in the submissions made by the learned Counsel for the Appellant. Admittedly, in the present case, the Registration is within three months of the commencement of generation for most of the projects. The maximum interpretation that can be extended would be that there would not be any Renewable Energy Certificates for the generation prior to three months before the application for issuance of the certificate. But, the Central Commission’s interpretation is not in line with the object and rationale of the Regulations.
30. The Regulations have to be interpreted and applied in the light of the object to promote the renewable generators and not in a restrictive manner to deprive the generators of any benefit that may be available to them. In other words, any beneficial legislation need to be interpreted and applied keeping in mind the object to be achieved and not to nullify the basic intent of legislation.

31. The registration process is merely procedural with a view to verify and confirm whether the substantive conditions mentioned above have been fulfilled or not. That apart, the Respondent No.2 – NLDC has no discretion whatsoever to refuse registration to any generator who fulfils the substantive conditions. In other words, the generator who fulfils the substantive conditions of sale of electricity at APPC rate, not taking promotional concessional measures etc., is entitled to claim Renewable Energy Certificates from the date of commissioning. But fulfilment is not from the date of registration, but from when the generation of electricity commences. In the circumstances, there is no justification for denying the entitlement of Renewable Energy Certificates to the generators from the date when the generation commences or for postponing the entitlement to the Renewable Energy Certificates after the date of registration.
32. It is now pointed out that REC Regulations have been recently amended by the Central Commission to specifically provide that the Renewable Energy Certificates shall be entitled to the generators only from the date of registration or the date of commissioning, whichever is later. This amendment comes into effect only from the date of

notification, namely 10.07.2013. The said amendment is as follows:

“10 (1) After registration, the renewable energy generation plant shall be eligible for issuance of Certificates under these Regulations from the date of commercial operation or from the date of registration of such plant by the Central Agency whichever is later.”

33. The very fact that the amendment is required to be brought into force with reference to the date of registration itself would indicate that the Central Commission upon realizing that the existing REC Regulations do not prohibit the issuance of Renewable Energy Certificates for electricity generation from the date of commissioning, though it thought it fit to amend the Regulations to provide for the issuance of Renewable Energy Certificates only from the date of registration. However, in the impugned Order the effect of the amendment has been carried out with retrospective effect. In other words, the Central Commission has applied the un-amended Regulations in the same manner as the amended Regulations.
34. In view of the above discussion, we feel that the Impugned Orders suffer from infirmity and the same are liable to be set aside. Accordingly, we hold that the Appellants are entitled

to the Renewable Energy Certificates for the electricity generated from the date of commissioning and the same ought not to be postponed to the generation after completion of the procedural formalities of registration.

35. SUMMARY OF OUR FINDINGS:

(a) **The Regulations have to be interpreted and applied in the light of the object to promote the renewable generators and not in a restrictive manner to deprive the generators of any benefit that may be available to them. In other words, any beneficial legislation need to be interpreted and applied keeping in mind the object to be achieved and not to nullify the basic intent of legislation.**

(b) **The registration process is merely procedural with a view to verify and confirm whether the substantive conditions mentioned above have been fulfilled or not. That apart, the Respondent No.2 – NLDC has no discretion whatsoever to refuse registration to any generator who fulfils the substantive conditions. In other words, the generator who fulfils the substantive conditions of**

sale of electricity at APPC rate, not taking promotional concessional measures etc., is entitled to claim Renewable Energy Certificates from the date of commissioning. But fulfilment is not from the date of registration, but from when the generation of electricity commences. In the circumstances, there is no justification for denying the entitlement of Renewable Energy Certificates to the generators from the date when the generation commences or for postponing the entitlement to the Renewable Energy Certificates after the date of registration.

(c) The Central Commission has recently amended the REC Regulations to specify that the renewable generating plant would be eligible for issuance of certificate from the date of commercial operation or from the date of registration whichever is later, but the amendment would come with effect from the date of notification namely 10.7.2013. This amendment would not be applicable to the Appellants which had been

registered with the Central Agency much before the date of the notification of the amendment.

(d) Thus, the Appellants would be entitled to the REC from the COD of the respective renewable energy projects subject to Regulation 7(1) of the REC Regulations which allows Appellants to apply for REC within three months after the corresponding generation.

36. In view of the above, the Appeals are allowed and the Impugned Order is set aside. NLDC is directed to issue the REC to the Appellants as per the above directions.
37. No order as to costs.
38. Pronounced in the Open Court on this 28th day of November, 2014.

(Rakesh Nath)
Technical Member
Dated: 28th Nov, 2014

(Justice M. Karpaga Vinayagam)
Chairperson

√REPORTABLE/~~NON-REPORTABLE~~